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Filing date: **02/01/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222962
Party	Plaintiff Heart of Success, Inc.
Correspondence Address	FRANCINE WARD LAW OFC OF FRANCINE D WARD 775 EAST BLITHEDALE STE 325 MILL VALLEY, CA 94941 UNITED STATES <a href="mailto:info@fwardattorney.com">info@fwardattorney.com</a>
Submission	Withdrawal of Opposition
Filer's Name	Francine D. Ward
Filer's e-mail	<a href="mailto:info@fwardattorney.com">info@fwardattorney.com</a>
Signature	/Francine D. Ward/
Date	02/01/2016
Attachments	Co-existence Agt.pdf(197098 bytes )

## TRADEMARK CO-EXISTENCE AGREEMENT

This Trademark Co-Existence Agreement (this "Agreement") is made and entered into as of this 30<sup>th</sup> day of December 2015 ("Execution Date") by and between Heart of Success, Inc., an Arizona corporation whose principal place of business is at 9121 East Tanque Verde Road, Ste. 105-117, Tucson, AZ, 85749 ("Heart"), and Angel Quintana, an individual located at 4547 Eagle Rock Blvd., #32, Los Angeles, CA, 90041 ("Quintana"), Collectively and hereinafter known as the "Parties".

### WHEREAS

Quintana has applied for SIGNATURE SYSTEM, U.S. Serial No. 86512479 ("Quintana Mark").

Heart has applied for SIGNATURE SYSTEM, U.S. Serial No. 86681096 ("Heart Mark").

Since as earlier as July 22, 2009, Heart has been using the Heart Mark, or in connection with speaking, coaching, digital products, and printed materials for her boot camps.

The Quintana Mark was published for opposition on July 7, 2015, and its registration has been opposed by Heart, the resulting opposition proceeding before the Trademark Trial and Appeal Board (#91222962).

Based upon the best information available to the Parties, as of the Execution Date, it appears they have become entitled to each use their respective marks as a result of their concurrent lawful use in commerce on such goods or services and in such manner that confusion, mistake, or deception would not likely result from such continued concurrent use.

The Parties wish to amicably resolve and confirm their respective concurrent rights to use their respective marks, so as to avoid any likelihood of confusion in the future.

### AGREEMENT

In consideration of the willingness of both parties to settle a trademark opposition proceeding in the Trademark Trial and Appeal Board (Trademark Opposition Proceeding number 91222962), the parties hereto hereby agree as follows:

#### I. Consent to Co-Exist.

(a) Quintana hereby acknowledges and agrees that Heart shall have the right to use, exploit, and register the Heart Mark, SIGNATURE SYSTEM, throughout the world in perpetuity, in accordance with the terms and conditions set forth herein. Quintana shall not object to, oppose or otherwise seek to limit in any way Heart's exercise of its rights in connection with the Heart Mark.

(b) Heart hereby acknowledges and agrees that Quintana shall have the right to use, exploit and register the Quintana Mark, SIGNATURE SYSTEM, throughout the world in perpetuity, in accordance with the terms and conditions set forth herein. Heart shall not object to, oppose or otherwise seek to

limit in any way Quintana's exercise of her rights to the Quintana Mark.

- (c) Given the disparate channels of trade, different targeted consumers, and dissimilar focus of the parties' goods and services, the parties have determined that their respective uses of the marks defined above are not likely to cause confusion, mistake, or deception as to the source or sponsorship of each of the parties' goods and services;
- (d) The parties agree that in the event that any confusion arises, they will cooperate and find ways to eliminate or minimize the confusion, without the obligation for either party to cease or further restrict their respective uses of the marks;
- (e) Should either party abandon its mark, its rights shall be immediately lost and the other party may thereafter use its mark in all proper ways, unrestrained by the terms of this Agreement, and may thereafter apply for and obtain a registration of its mark unrestricted by this Agreement.

## 2. Term.

The term of this Agreement shall commence upon the date the Agreement is signed and shall continue in perpetuity.

## 3. Consideration.

In consideration of the rights granted to each party hereunder, each party agrees to be bound by the applicable terms and conditions herein. Heart agrees to withdraw the opposition proceeding and to file any motions that both parties have agreed that their marks are able to co-exist.

## 4. Registration and Protection of the Marks.

Heart does not object to the Quintana Mark proceeding to registration. Notwithstanding the foregoing, in no event shall either party be required to bear any costs or incur any expenses in connection with the protection of its respective mark as each party shall protect its own mark.

Quintana does not object to the Heart Mark proceeding to registration. Notwithstanding the foregoing, in no event shall either party be required to bear any costs or incur any expenses in connection with the protection of its respective mark as each party shall protect its own mark.

The terms of this Agreement will apply to Heart and Quintana and all of their affiliates, licensees, heirs, and assignees.

## 5. Notices.

All notices, requests, demands and other communication under this Agreement shall be deemed to have been sufficiently given either when delivered by hand, first class mail (postage pre-paid, return receipt requested), private courier service or facsimile addressed to either party. Notices shall be effective only when addressed as follows (or as otherwise designated by proper notice under this Agreement):

To Angel Quintana:

Anthony M. Verna III  
Verna Law, P.C.  
445 Hamilton Ave., Suite 1102  
White Plains, NY 10601

To Heart of Success, Inc.

Francine Ward  
Law Office of Francine Ward  
775 E. Bithedale Ave., Ste. 325  
Mill Valley, CA 94941

#### **6. Assignment.**

Each party may freely assign this Agreement, or any part hereof, without limitation, with 30-day notice to the other party as listed above.

#### **7. Relationship of the Parties.**

This Agreement does not constitute either party as, and neither party shall represent itself as, the agent of the other, or create a partnership or joint venture between the parties, and, except as specifically set forth herein, neither party shall have the power to obligate or bind the other in any manner whatsoever.

#### **8. Severability.**

If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, provided that the economic and legal substance of the transactions contemplated is not affected in any manner materially adverse to any party.

#### **9. Entire Agreement.**

This Agreement contains the entire understanding and agreement between the parties hereto, with respect to the subject matter hereof, supersedes all prior oral and written understandings, arrangements and agreements relating thereto, and may not be modified, amended, extended, discharged, or terminated except by a written instrument signed by both parties.

#### **10. Arbitration; Attorneys' Fees and Costs.**

(a) Arbitration: Any dispute between the parties arising out of this Agreement may be resolved before a single arbitrator. Such arbitration shall be administered by and shall follow the rules of commercial arbitration of the American Arbitration Association. Unless the parties agree in writing otherwise, the arbitration shall be held at the offices of the American Arbitration Association in Tucson, Arizona. The arbitrator shall be an attorney having significant experience in trademark law who shall

apply only federal law. The arbitrator shall not have the authority to do the following: require that any hearing be held before a court reporter; declare any provision of this Agreement void; terminate this Agreement in whole or part; award punitive, consequential or liquidated damages. The decision of the arbitrator shall be final and non-appealable, and may be entered as a judgment in the appropriate court. Notwithstanding the foregoing, either party may seek equitable or injunctive relief from any court of competent jurisdiction.

(b) Each party shall be responsible for their costs and fees in the event of any arbitration or action for injunctive relief. Such fees shall include, but not be limited to, all attorney's and experts' fees, and any other costs attendant to initiating and/or maintaining such dispute resolution.

#### II. Original Copies:

A copy of this Agreement can be signed by each party and collectively both executed agreements, having one signature, binds both parties to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the latest date written below.

Heart of Success, Inc. ("Heart")

Name: KENDALL SCHNEIDER

Position: OWNER

Signature: Kendall Schneider

Date: 1/6/2014

Angel Quintana

Signature: Angel Quintana

Date: 1/6/16